

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.Rev.Pet.No. 3119 of 2005()

**CRA.1188/2004 of II ADDL.SESIONS COURT, ERNAKULAM
CC.1166/2002 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI**

REVN. PETITIONER: APPELLANT/ACCUSED.

**1. IVAN A.VARGHESE, DIRECTOR AIMS,
64, 708, ALACKAL HOUSE, AYYAPPANKAVU, KOCHI 18.**

**2. ADVANCED INSTITUTE OF MANAGEMENT
STUDIES (A.I.M.S.), MINI MARKET COMPLEX,
DESHABHIMANI JUNCTION, KALOOR, COCHIN 17,
REPRESENTED BY ITS MANAGING DIRECTOR,
IVAN A.VARGHESE.**

BY ADV. SRI.BOBAN PALAT

RESPONDENTS: COMPLAINANT.

**1. M/S.MEDIA EXPRESSION, 3RD FLOOR, NORTH
PLAZA, NORTH RAILWAY STATION ROAD, KOCHI,
REPRESENTED BY ITS PROPRIETOR, SIBY JOSEPH.**

**2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

V. RAMKUMAR, J.

Crl. R.P. No. 3119 OF 2005 D

Dated this the 25th day of October, 2007

O R D E R

In this revision filed under Section 397 read with Section 401 Cr.P.C. the petitioner who was the accused in C.C. No.1166/2002 on the file of the J.F.C.M.-I, Kochi challenges the conviction entered and the sentence passed against him for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioner reiterated the contentions in support of the revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the revision petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded

on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the revision petitioner. As per the interim order passed by this court, the petitioner has deposited a sum of Rs.42,000/- (Rupees forty two thousand only) before the trial court as against the compensation of Rs.41,632/- awarded by the courts below. In view of the said deposit, the sentence imposed on the revision petitioner is altered to one of fine. The said amount of Rs.42,000/- (Rupees forty two thousand only) shall constitute the fine. The fine amount shall be paid to the 1st respondent complainant as compensation under section 357(1) Cr.P.C.

This revision is disposed of confirming the conviction but altering the sentence as above.

(V. RAMKUMAR, JUDGE)

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